

# Addressing copyright concerns regarding Japanese university entrance exams

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## Reference data:

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An analysis of the 2010 entrance examinations of 100 Japanese universities indicates that it is common for exam committees to use previously published material when creating their tests. Additionally, the committees often make changes to this material, and in many cases the authors are not cited. Despite this, a review of Japanese and international copyright laws suggests that infringement of authors' rights may not be as rampant as is commonly believed. In this study, which updates a paper that first appeared in *The Language Teacher* (Wheeler, 2009), the author examines the economic and moral rights of authors and how they apply when their work is used on the university exams. Additionally, the pros and cons of two alternatives to the standard committee method of choosing material for the exams are discussed.

100大学の2010年の入学試験の分析によって、試験を作成する時に、学科試験委員は既に出版された題材を利用することがよく見られる。しかも、この題材に、しばしば変更を加えて、多くの場合、著者名を引用していない。しかし、日本の著作権法と国際著作権法を注意深く見ると、一般的に思われているより、著作者の権利を甚だしく侵害している訳ではないということが示唆される。本論文では、既に*The Language Teacher* (Wheeler, 2009) 誌に発表した論文の内容を改訂して、題材が入試に使用されている著者の財産権と人格権を調査する。さらに、学科試験委員の入試題材の標準的な選択方法に対して、二つの代案を提示し、それぞれの良い点と悪い点を述べる。

**A**LTHOUGH THERE are few formal studies concerning copyright issues in regard to material that appears in the English sections of Japanese university entrance exams, it is a topic that often comes up in discussion, with the general consensus seemingly similar to what Murphey (2005) posits: copyright infringement is rampant throughout the exams. Much of the basis for this assertion rests on three common assumptions on the manner in which university entrance exam committees choose sources for their schools' tests. First, it is believed that they commonly use works that have been published previously. Next, the committees do not acknowledge the authors of these works. Finally, it is thought that alterations are made to the original sources in order to make them more accessible to those taking the exams. Expanding on a previous study (Wheeler, 2009), this paper examines the accuracy of these assumptions as well as the conclusion that—if they are indeed valid—this constitutes irrefutable proof that universities are legally infringing upon authors' rights. Additionally, the advantages and drawbacks of two methods of selecting exam material that could help committees avoid accusations of infringement are discussed.



## Analyzing the accuracy of the three assumptions

To examine the actuality of the three beliefs concerning material that appears on the entrance exams, English reading passages from the 2010 exams of 100 universities were analyzed. Universities were chosen based on the availability of their exams online, either on preparatory (cram) school websites, or the university homepages. Concerning the latter, nearly 700 university websites were viewed, but—with many citing copyright concerns—most schools do not provide their exams online.

To determine whether exam committees utilized material from already published sources, a basic Google search was conducted, inserting key words or phrases from exam reading passages. Results from this search indicate there is evidence to support the three assumptions concerning the exams. For example, it was determined that on at least 93 of the exams, previously published material had been used for one or more reading passages. Moreover, on 54 of these exams, acknowledgement of the original authors was not provided for at least one passage. Finally, on 78 of the 93 exams, the original material had been altered in one or more passages. On the other 15 exams, it was ascertained that no changes had been made from the original sources for 7, and for the remaining 8, it was unclear as to whether changes had occurred due to lack of access to the original material.

Almost all of the changes involved committees simplifying words or phrases from the original texts, similar to that which appeared in the passage of one exam in which the word *impropriety* in the published work was changed to *criminal activity* on the exam. Of note, on the exams of 23 universities, direct quotations (within quotation marks) were simplified in this manner, but the speakers' names were unchanged. Most of the remaining changes consisted of text omission. For example, on one exam's reading passage, a sentence from a journal article originally appearing as *An organic process of descent with modification called evolution* was shortened to *A process called evolution*.

## Copyright infringement?

Although the three beliefs concerning exam material are valid, a study of pertinent Japanese copyright laws indicates that while some universities may be infringing upon authors' moral rights, copyright violations are not quite as common as many believe.

### Authors' economic rights: Article 36

Many professors who have worked on exam committees are likely to be familiar with the Japanese copyright laws' Article 36, which provides information concerning the legal use of published material. In accordance with its first paragraph, the university practice of using published material for entrance exams does not actually constitute infringement: "It shall be permissible to reproduce or make the public transmission . . . of, a work already made public as questions for an entrance examination" (Copyright Research and Information Center [CRIC], *Copyright law of Japan*, n.d.). However, although Article 36 allows for the use of copyrighted material on the exams, it should also be noted that according to its second paragraph, if such use is primarily for purposes of profit, royalty payments are due to the original authors. Entrance exams, of course, are not free, and in fact can cost up to 30,000 yen per applicant, with some of the more esteemed universities receiving thousands of applications each year. One way universities can avoid paying royalties is to cite the various administrative fees of the exams, such as printing costs, remuneration to exam committee members, monitors, graders, and even rental costs. The author's university, for example, holds its exam in the building of a preparatory school. More likely, however, is that universities simply point out that the *purpose* of their exams is not profit, but rather to determine which applicants are best qualified to attend the school.



### Authors' moral rights: Articles 20 and 48

Article 36 is a stipulation of authors' economic rights; less known, perhaps, are two additional articles—20 and 48—which detail authors' moral rights as they apply when their works are altered. According to the first paragraph of Article 20, “the author shall have the right to preserve the integrity of his work and its title against any distortion, mutilation or other modification against his will” (CRIC, *Copyright law of Japan*, n.d.). Considering that most exam committees do not contact authors prior to using their works on the exams, any alterations are seemingly in violation of this clause. Obfuscating the issue, however, is the article's second paragraph, which provides numerous scenarios in which the authors' rights do not apply. Although the entrance exams are not referred to specifically, committees can point to the fourth subheading of the second paragraph which mentions “other modifications . . . which are deemed unavoidable in the light of the nature of a work as well as the purpose and the manner of exploiting it” (CRIC, *Copyright law of Japan*), and argue that this includes the entrance exams.

One concern that arises from the qualifying statement in Article 20 is about what manner of change to the original text should be “deemed unavoidable.” According to CRIC, there is probably a limit to the changes a university can make for its examination: “It is a widely shared idea that the modification needed to request to fill the spaces between brackets or to rearrange separated sentences to the original order are accepted as ‘unavoidable.’ On the other hand, rewriting of difficult parts or deleting some parts without notice probably constitutes infringement of the right of integrity” (CRIC, *Copyright case study*, n.d.). However, exam committees can argue that changing some vocabulary is necessary and that it is necessary for the original text to be simplified in order to render it more accessible to test takers. A counterargument to this is that if the material is too difficult in its original form, committees should choose a dif-

ferent source. Still, because the wording of Article 20 does not expressly forbid alterations to the text, committees can legitimately contend that they are doing nothing wrong.

Article 48 outlines citation requirements, detailing instances in which information regarding original sources must be provided. Among these, citation is mandatory “where exploitation, other than reproduction, is made of works in accordance with the provision of Article 32, or where exploitation is made of works in accordance with the provisions of Article 35, *Article 36, paragraph (1)*, Article 38, paragraph (1), or Article 41 or 46, provided that standard practice so requires” (CRIC, *Copyright law of Japan*, n.d.) [italics added]. Moreover, according to Article 48, included in the citation must be the name of the author, if applicable.

It is with the provisions of Article 48 that a number of universities may be encroaching upon authors' moral rights. On 48 of the exams observed for this study, there were changes to the source material in at least one reading passage without any form of citation provided. Additionally, on the exams of another 16 universities, citations provided for reading passages did not include the names of the original authors. Instead, citations often offered only basic information, such as “From an article in *The New York Times*” or “Newsweekより.”

Oddly, by distinguishing between “reproduction” of a source and “exploitation” (meaning the source has been altered), and only mandating that citations are required for the latter instance, Article 48 can lead committees to conclude that if they have *not* changed material, such citation is not necessary. Although most committees do make changes to the original texts, on the reading passages of four of the exams examined for this study, references to the original sources were not provided, but no changes were made to the material. Due to the ambiguity of Article 48, committees from these universities can claim that what they did was well within their rights.



## International copyright

According to Japanese copyright laws, a number of universities are indeed infringing upon authors' moral rights, but regarding economic rights, they are operating within the boundaries provided. This also appears to be true under the regulations of international copyright. One of the main tenants of the Berne Convention, the international agreement concerning copyright, is that participating countries, which include Japan, recognize the copyright of works of foreign authors from other member countries in the same manner they recognize those of their own nationals. As such, a Japanese company using for profit an author's work is obliged to pay royalties to said author, regardless of his or her nationality or where the work originated. In this sense, Japanese and foreign authors are entitled to equal rights under Japanese copyright laws. On the other hand, if foreign and national authors are to be treated similarly, it stands to reason that the provisions of Article 36—allowing universities to use previously published material without author permission being required and no royalties due—must also apply to the works originating from outside of Japan.

As is the case with Japanese copyright laws, the issue of moral rights is not as clear. According to the Convention, "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation" (World Intellectual Property Organization). Although this appears to indicate that universities are infringing upon copyright when they alter the source material they use, committees can counter that the changes they make to the original sources do nothing to besmirch the authors' reputations. That is, the intent of the alterations to the source material is merely to simplify, not change the author's intent or main points.

## Alternatives to using published material

Although the laws may allow for universities to use copyrighted material, questions about authors' rights persist. It seems peculiar, for example, that Japan's copyright laws dictate that citations must be provided if alterations to original material have been made, but make no mention of whether such citations are necessary if the text has been untouched. In other words, if an author's work is not changed, citation may not be necessary; it is only when the text includes words or phrases the author did *not actually write* that his or her name must be included. Moreover, regarding text alteration, what manner of change can—and cannot—be considered unavoidable remains a gray area. Additionally, on the subject of rights, as long as an author's economic rights are not violated, are there truly any consequences to infringing upon his or her moral rights? Finally, regarding authors' economic rights, if profit is not a primary purpose of the entrance exams, does this mean the administrative expenses are so great that it is necessary to charge up to 30,000 yen for exam fees?

Two ways in which these issues concerning copyright could be resolved would be for committees to either write their own reading passages or utilize what is available from public domain sites. However, as will be discussed below, although both options have their advantages over the more common committee practice of selecting exam material, there are enough drawbacks to each that it is unlikely either will be implemented by a great many universities.

## Writing own material

One obvious benefit of committees writing the material for reading passages is that it would resolve the issue of authors' rights, both moral and economic. An additional benefit is that since the committees are mostly comprised of the university's professors,



they should have a good idea of the academic level expected of those who wish to attend the university and could tailor the passages accordingly.

Moreover, writing one's own material would eliminate the fear that the university may be unknowingly using recycled material, publications that have been used previously on other universities' exams. This is a legitimate concern, especially because preparatory schools regularly use material from actual exams in order to prepare their students for the tests. Universities inadvertently using a recycled text run the risk that some of the exam takers studying at the preparatory schools will already be familiar with it, giving them a decided advantage over others. This worry would not exist if committees were to write new material each year.

Finally, though perhaps a minor point, writing one's own passages could spare a university from potential embarrassment. As Article 48 states, if universities using previously published material make alterations to the original text, they are obliged to provide a reference. Some universities may be reluctant to disclose such information, considering the source of the material. Several of the universities whose exams were analyzed for this study, for example, used articles that originally appeared in magazines geared toward young children. Others used recycled material, but not that which had appeared on the exams of other universities; instead, the passages could be found on *high school* entrance exams. Finally, one university used material available from an online essay purchasing site, on which was stated that all of its essays were student written. Universities worried that revealing these sources could leave an unfavorable impression regarding its English academic credentials would be spared this concern by writing their own passages.

However, there are numerous factors that may temper the interest in writing original passages. Published material, especially the kind which appears in well-known magazines

such as *Time* or *Newsweek*, has an aura of authority. It also has the added advantage that it has likely been edited or proofread to the extent that grammatical errors or other mistakes are at a minimum. Conversely, there may be worries about the quality of committee written material. Japanese professors, for example, may feel they are incapable of writing a lengthy passage in English that is mistake free, let alone one that reads naturally. Native English speakers, too, are not infallible. There is always the possibility that a grammatical mistake or other small error could go unnoticed by the committee. Certainly, committees proofread their material countless times. However, this process may in fact lead to a sort of reader fatigue setting in, making it more difficult to catch mistakes. Moreover, due to the private nature of these exams, especially while they are being written, at most universities the committee is likely to be the only group editing the exam material.

Time is perhaps the biggest obstacle to exam committees writing their own material. It is much quicker to find an already published article and make a few minor alterations to the text than it is to write something from scratch. The difference may not be so great if a university's exam includes just one or two reading passages. For those universities, writing the passages is a viable option. However, one of the exams analyzed for this study had ten passages; others had up to eight. Considering that there are several other sections that appear on the English exams in addition to the reading passages, it is not likely that committees from these universities would be willing to invest that much time or effort to writing their own material.

### **Public domain**

Public domain texts have been suggested (Murphey, 2005) as another alternative to the current situation. One benefit of public domain material is that it is free, eliminating the issue of whether royalty payments are necessary. Additionally, because



most of these works were issued at one time through professional publishers, theoretically they have been scrutinized thoroughly and typographical errors should be at a minimum.

However, there are numerous reasons why many committees may be reluctant to turn to the public domain option. First, most of the works are fiction. This is problematic when considering that of the more than 400 reading passages examined for this study, over 95 percent were nonfiction. To exam committees, the length of a passage is a major consideration. Most of the reading passages found on the exams are fewer than 500 words. As such, short articles from magazines such as *Time* and *Newsweek* are ideal; they have a distinct introduction, body, and conclusion, all wrapped up succinctly in a matter of a few pages. The brevity of these articles also makes creating exam questions concerning the passages—many of which require exam takers to sum up the main conclusions or choose the most appropriate title—a comparably simple task. Simply due to their length, works of fiction, even short stories, are much more challenging for committees.

Another problem with fiction is that one may have to deal with numerous examples of slang, colloquialisms, and other perceived oddities of language with which committee members, let alone test takers, may not be familiar. The mostly straightforward or standard English in which nonfiction is usually written is likely to be something committees are more comfortable with using.

Finally, the majority of works one can find on public domain sites are there because they have existed long enough that the authors' copyright privileges have expired. For committees worried about using recycled material, this is a problem. For the vast majority of committees, more recent material is preferable because the longer a work has been available, the greater the possibility that it has been used on a previous exam. Of the 287 passages examined in this study for which dates of original publication could be verified, 108 were from 2009 alone, and over 80 percent were published within the last 5 years.

## Avoiding infringement when using copyrighted material

For those exam committees not inclined to write their own texts or use public domain material, there are a number of ways in which they can minimize accusations of copyright infringement. The simplest would be to provide complete citations for all sources used, regardless of whether changes have been made to the original text. Although Article 48 requires that when citations are necessary at least the authors' names be included, organizations such as the Copyrights Association of Educational Publishers and Institutions (n.d.) recommend even more detail be provided, including the work's title, author's name, publisher's name (for a book), date of publication, volume number (if applicable), and page numbers.

Additionally, if committees were to choose material in which alteration is unnecessary, the debate over what should be considered "unavoidable" change could be avoided. If the selected document does happen to have vocabulary the committee deems difficult for test takers, rather than simplify it, another option would be to provide Japanese translations at the end of the passage. Many committees, in fact, already do this when writing their exams. However, if it is determined that a word or phrase absolutely *must* be altered, it is important to remember that Article 48 is clear that any changes require a citation be provided.

Finally, if changes are made to the original material, this could be noted on the exams, even if Japanese copyright laws do not expressly require committees to do so. We can already see this on many exams, with committees including notes such as "adapted from" or "based on" in English, or "一部変更 [*ichibu henkou*]" or "一部改変 [*ichibu kaihen*]" in Japanese, acknowledging that they have made changes. It would also probably be beneficial if committees could refrain from altering direct quotations; instead, they could remove the quotation marks altogether and simply paraphrase the speaker.



## Conclusion

Although the perception may be that copyright violations are rampant among the university entrance exams, actual infringement—at least as far as authors' economic rights are concerned—appears less common than is commonly believed. Moreover, it is very possible that in many cases, when infringement does take place, it does so out of ignorance, with committees not realizing citations are required when a work is changed. One professor at my own university, for example, expressed surprise when shown Articles 20 and 48; he had been aware of only Article 36.

Although it is the author's personal belief that it is far preferable for committees to write their own material for exams, rather than use and alter previously published articles or essays, according to Japanese and even international copyright laws the latter practice does not appear to be violating the economic rights of authors. Moreover, it is also unclear as to whether altering the text legally infringes upon their moral rights. The problems occur when committees make these changes without including a reference to the authors; providing clear and complete citations would at least be a positive step toward resolving this issue.

## Bio data

**Greg Wheeler** obtained his MA (East Asian Studies) from Cornell University in 1995 and began teaching in Sapporo the following year. He has taught at Sapporo Medical University since 2008. In addition to copyright issues, his main research interest is examining Western stereotypes/overgeneralizations concerning Japanese academia, particularly regarding matters of plagiarism.

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